

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-278-C - ORDER NO. 97-72
JANUARY 24, 1997

IN RE: Application of MCI Telecommunications Corporation for Modification of Tariff Filing Procedures.) ORDER) APPROVING) STIPULATION) AND APPLICATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of MCI Telecommunications Corporation (MCI or the Company) for approval of a modification to its tariff filing procedures. MCI seeks to have its tariff filing procedures mirror those authorized in Order Nos. 96-493 and 96-619 for Cable & Wireless, Inc., a certified interexchange carrier in South Carolina. The Application was filed pursuant to S. C. Code Ann. Section 58-5-10 (1976) et. seq. and 26 S. C. Code Ann. Regs. 103-821 (1976).

Subsequent to the filing of the Application, the Commission's Executive Director instructed the Company to cause to be published a prepared Notice of Filing in newspapers of general circulation in the area affected by the Application. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in these proceedings of the manner and time in which to file the appropriate pleadings for participation. A Petition to Intervene was received from the

Consumer Advocate of the State of South Carolina (the Consumer Advocate).

Prior to a public hearing in this matter, MCI and the Consumer Advocate entered into a Stipulation. See Attachment A. In its Stipulation, MCI notes that it seeks treatment as follows:

- a. Its Business Service Offering Tariffs should not be required to state maximum rates (caps);
- b. Such tariffs should be presumed valid upon filing, subject to the Commission's right within seven (7) days to institute an investigation of the tariff filing, in which case such filing shall be suspended pending further Order of the Commission; and
- c. The Company should be subject to the same monitoring process as similarly regulated companies.

The Stipulation further notes that the Consumer Advocate has no objection to MCI's requests regarding presumptively valid tariffs and a similar monitoring process.

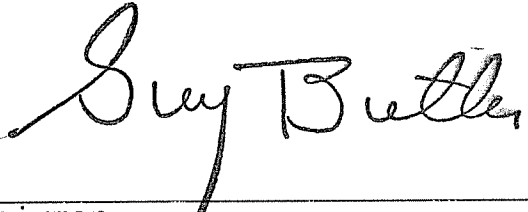
With respect to MCI's request for removal of maximum rate caps, the Consumer Advocate has alleged that the Commission does not possess the requisite statutory authority to approve such a request, absent a finding of competition pursuant to S. C. Code Ann. Section 58-9-585 (Supp. 1996). To that end, according to the Stipulation, the Consumer Advocate has appealed the Commission's decisions in the AT&T Docket and Cable & Wireless cases. The AT&T appeal is currently before the South Carolina Supreme Court, and the Cable & Wireless appeal is before the Court of Common Pleas in Richland County. The parties believe that since the removal of the

maximum rates (caps) is a matter of law, they do not believe that any purpose would be served by an evidentiary hearing in the instant Docket. Further, the parties have agreed that, should the Commission grant the full MCI requests, and should the Supreme Court find in the above-referenced AT&T appeal that the Commission lacks the statutory authority to permit removal of maximum caps in the manner granted for AT&T, then MCI will immediately, upon notice of such a ruling, revert to its current regulatory treatment regarding maximum rates (caps), and return to charging the rates in effect on the date of Commission approval of the Stipulation. Other terms and conditions are stated in the Stipulation.

The Commission has examined this matter, and believes that since the requests are consistent with relief granted to AT&T and Cable & Wireless in the past, we believe that similar relief should be granted to MCI. We also believe that the Stipulation as noted above should be approved. Therefore, pursuant to this Order, MCI's Business Service Offering Tariffs shall not be required to state maximum rates (caps). Such rates shall be presumed valid upon filing, subject to the Commission's right within seven (7) days to institute an investigation of the tariff filing, in which case such filing shall not be suspended pending further Order of the Commission, and MCI shall be subject to the same monitoring process as similarly regulated companies.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Deputy Executive Director

(SEAL)

DISSENTING OPINION OF COMMISSIONER WARREN D. ARTHUR, IV:

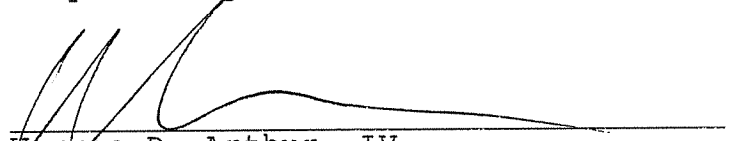
I have voted against the motion and decision on the Petition and Request of MCI for Alternative Regulation. MCI's Petition was filed solely under and pursuant to certain authority granted by the majority to AT&T and Cable and Wireless. The authority granted to these companies was not based on S. C. Code Ann. §58-9-585 (Supp. 1996). This Code section clearly states that the Commission must first determine, "after notice and hearing, that the substantial evidence of record shows that a particular service is competitive in the relevant geographic market before alternate regulation may be implemented." The decision of this Commission should be based on §58-9-585 alone and should follow the framework of the Code section.

There was no direct evidence to prove competition within South Carolina. Before this Commission may grant such relaxed regulation

to an interexchange carrier, the statute requires a threshold determination of competition for the services concerned. MCI's application should have been denied prima facie since MCI clearly did not meet its burden of proof of showing competition. The Commission's decision is inconsistent with a proper reading and application of the statute.

The Legislature of South Carolina intended for interexchange carriers to make an evidentiary showing of competition in a case such as this. The statute expressly mentions the requirement of competition in four of the six sections of §58-9-585. Section (B) further mandates the minimum considerations to be utilized when exploring the question of competition. I believe the Commission's decision ignores the legislature's intent, and I cannot acquiesce this departure from the statute.

Respectfully submitted,



Warren D. Arthur, IV
Commissioner, Sixth District

STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 96-278-C

009/97a
FILED

IN THE MATTER OF:

MCI Telecommunications Corporation
Application for Modification
of Tariff Filing Procedures

ACCEPTED
Legal 2/2/97 1-8-97

STIPULATION

S. C. PUBLIC SERVICE COMMISSION
RECEIVED
JAN 7 1997
RECEIVED

MCI Telecommunications Corporation ("MCI") and Philip S. Porter, Consumer Advocate for the State of South Carolina ("Consumer Advocate"), the Applicant and sole Intervenor, respectively, in the above captioned proceeding hereby stipulate before the Public Service Commission of South Carolina ("Commission") as follows:

1. By its Application, MCI seeks to obtain relief identical to that granted by the Commission to Cable & Wireless, Inc. in Order Nos. 96-493 and 96-619 in Docket No. 96-047-C, which was based on the relief granted to AT&T in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. In particular, MCI seeks that:

- a. Its business service offering tariffs not be required to state maximum rates (caps);
- b. such tariffs be presumed valid upon filing, subject to the Commission's right within seven (7) days to institute an investigation of the tariff filing, in which case such filing shall be suspended pending further order of the Commission;
- c. it be subject to the same monitoring process as similarly regulated companies.

2. With respect to MCI's requests regarding presumptively valid tariffs and a similar monitoring process, the Consumer Advocate does not object to these requests, and would urge approval by the Commission.

S. C. PUBLIC SERVICE COMMISSION
RECEIVED
JAN 1 1997
RECEIVED

3. With respect to MCI's request for removal of maximum rate caps, the Consumer Advocate believes that the Commission does not possess the requisite statutory authority to approve such a request, absent a finding of competition pursuant to S.C. Code Ann. § 58-9-585 (Supp. 1996). To that end, the Consumer Advocate has appealed the Commission's decisions in the above referenced AT&T (Porter v. PSC and AT&T, 96-CP-40 0677) and Cable & Wireless (Porter v. PSC and Cable & Wireless, 96-CP-40-3187) cases. The AT&T appeal is currently before the Supreme Court, and the Cable & Wireless appeal is before the Court of Common Pleas in Richland County.

4. The Consumer Advocate's intervention in the instant docket is for the purpose of maintaining a consistent position before the Commission with respect to the lifting of maximum rate caps for interexchange carriers. Because this matter is limited to a question of law, for which the respective positions of the Commission and the Consumer Advocate have been previously set forth, the parties stipulate that no purpose would be served by an evidentiary hearing in the instant docket.

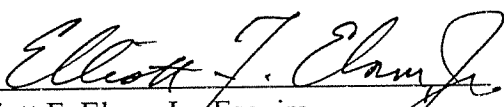
5. The parties further stipulate that should the Commission grant the full relief MCI requests, and should the Supreme Court find in the above referenced AT&T appeal that the Commission lacks the statutory authority to permit removal of maximum rate caps in the manner granted for AT&T in Order Nos. 95-1734 and 96-55, then MCI will immediately, upon notice of such a ruling, revert to its current regulatory treatment regarding maximum rate caps, and return to charging the rates in effect on the date of Commission approval of this Stipulation.

6. The parties further stipulate that, in the interim period prior to the Supreme Court ruling on the AT&T appeal, MCI will inform the Consumer Advocate of any instances in which it raises prices for the services at issue in this proceeding to a level which is in excess of its current maximum rate caps.

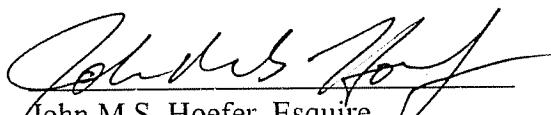
7. The parties agree that should the Commission fail to fully approve the terms of this Stipulation prior to the hearing scheduled for February 12, 1997, then each shall be free to advocate its position before the Commission. In that event, the parties agree to cooperate on any request by MCI for rescheduling of deadlines for testimony and for rescheduling of the hearing date, if necessary.

WE SO STIPULATE:

CONSUMER ADVOCATE


Elliott F. Elam, Jr., Esquire
S.C. Department of Consumer Affairs
P.O. Box 5757
Columbia, SC 29250-5757
(803) 734-9464 Ext. 138

MCI TELECOMMUNICATIONS
CORPORATION


John M.S. Hoefer, Esquire
Willoughby & Hoefer, P.A.
P.O. Box 8416
Columbia, SC 29202-8416
(803) 252-3300

Attorney for Applicant

January 7, 1997